

GEORGE M. PASION,)	No. C 00-20249 JF (PR)
)	
Petitioner,)	ORDER ADDRESSING PENDING
)	MOTION
vs.)	
)	
)	
R.Q. HICKMAN and BILL)	
LOCKYER,)	
)	
Respondents.)	
)	(Docket No. 70)

Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his state conviction. The petition was denied on the merits on March 28, 2003. After judgment had been entered, Petitioner filed an application for leave to file supplemental writ, which the court construed as a “motion for reconsideration of the perceived dismissal of his claim that his sentence violated the Eighth Amendment.” (Docket No. 59.) In its order filed March 29, 2004, the Court clarified that the Eighth Amendment claim was never dismissed and that the claim had been “fully briefed by the parties.” (Id.) Accordingly, petitioner’s Eighth Amendment claim was considered on the merits in the Court order denying the petition.

On August 17, 2009, petitioner filed a request for “prompt” disposition of the

1 Court order issued in March 2004. (Docket No. 70.) However, there are further
2 rulings to be made by this Court as the matter has been fully adjudicated on the
3 merits, including petitioner's Eighth Amendment claim. Petitioner is not entitled to
4 federal habeas relief.

5 Petitioner also seeks relief based on a Ninth Circuit decision issued in 2008.
6 (See Docket No. 70 at 2.) Liberally construed, petitioner appears to be seeking to
7 file a second or successive habeas petition. However, a district court must dismiss
8 claims presented in a second or successive habeas petition challenging the same
9 conviction and sentence unless the claims presented in the previous petition were
10 denied for failure to exhaust. See 28 U.S.C. § 2244(b)(1); Babbitt v. Woodford, 177
11 F.3d 744, 745-46 (9th Cir. 1999). Additionally, a district court must dismiss any
12 new claims raised in a successive petition unless the petitioner received an order
13 from the court of appeals authorizing the district court to consider the petition. See
14 28 U.S.C. § 2244(b)(2). Petitioner's claim challenges the same sentence as the
15 previous petition and Petitioner has not presented an order from the Ninth Circuit
16 Court of Appeals authorizing this Court to consider any new claims. Petitioner's
17 first petition was adjudicated on the merits in this Court's order denying the petition
18 on March 28, 2003. Accordingly, this Court cannot address the merits of this claim
19 without the Ninth Circuit's authorization.

20 This order terminates Docket No. 70.

21 IT IS SO ORDERED.

22
23 DATED: 9/3/09

24 
JEREMY FOGEL
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

GEORGE M. PASION,
Petitioner,

Case Number: CV00-20249 JF

CERTIFICATE OF SERVICE

v.

R.Q. HICKMAN and BILL LOCKYER,
Respondents.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 9/9/09, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

George M. Pasion E-16624
California State Prison-Solano
P.O. Box 4000
Vacaville, CA 95698-4000

Dated: 9/9/09

Richard W. Wieking, Clerk